

FIRST REGULAR SESSION

HOUSE BILL NO. 400

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE AMATO.

0147H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 534.602, RSMo, and to enact in lieu thereof one new section relating to unlawful occupancy on private noncommercial property.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 534.602, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 534.602, to read as follows:

534.602. 1. For purposes of this section, the following terms mean:

(1) "Petitioner", the property owner, or an authorized agent of a property owner, of **private noncommercial** property [~~containing a residential dwelling~~] who has filed a verified petition under the provisions of this section;

(2) "Respondent", the person or persons unlawfully occupying **private noncommercial** property [~~containing a residential dwelling~~], against whom a verified petition has been filed;

(3) "Unlawful occupant" or "unlawful occupants", any person or persons who detain, occupy, or trespass on **private noncommercial** property [~~containing a residential dwelling~~] without the permission of the property owner, who otherwise have no legal right to occupy the property under state law, and who are not afforded any protections provided to a tenant under state law.

2. Notwithstanding any provision of this chapter to the contrary, a property owner or his or her authorized agent may seek relief for the removal of a person or persons unlawfully occupying **private noncommercial** property [~~containing a residential dwelling~~] under this section by filing a verified petition in the county or city not within a county where the property is located.

EXPLANATION — Matter enclosed in bold-faced brackets ~~thus~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 3. Except as provided in subsection 6 of this section, clerks of the court under the
19 supervision of a circuit clerk shall explain to the property owner or his or her authorized agent
20 not represented by counsel the procedures for filing all forms and pleadings necessary for the
21 presentation of his or her petition to the court. Notice of the fact that clerks will provide such
22 assistance shall be conspicuously posted in the clerks' offices. The location of the office
23 where a petition can be filed shall be conspicuously posted in the court building. The
24 performance of duties prescribed in this section shall not constitute the practice of law as
25 defined in section 484.010. All duties of the clerk prescribed in this section shall be
26 performed without cost to the litigants. The supreme court may promulgate rules as
27 necessary to govern conduct of court clerks under this section and shall provide forms for
28 petitions and written instructions on filling out all forms and pleadings necessary for the
29 presentation of the petition to the court.

30 4. Filing fees and court costs under this section shall be the same as filing fees and
31 court costs required when filing a claim in associate circuit court.

32 5. (1) Upon the filing of a verified petition under this section, and for good cause
33 shown in the verified petition, the court shall immediately issue an ex parte order to remove
34 the respondent. The assertion of sufficient evidence that the person or persons are unlawfully
35 occupying **private noncommercial** property [~~containing a residential dwelling~~] shall
36 constitute good cause for purposes of this section. The verified petition shall set forth the
37 following:

38 (a) The petitioner is the property owner or authorized agent of the property owner;

39 (b) [~~The property that is being occupied includes a residential dwelling;~~

40 ~~(c)~~ (c) An unlawful occupant or unlawful occupants have entered and remain or
41 continue to reside on the property owner's property;

42 ~~(d)~~ (d) The real property was not open to members of the public at the time the
43 unlawful occupant or unlawful occupants entered;

44 ~~(e)~~ (e) The unlawful occupant or unlawful occupants are occupying the property
45 without the permission of the property owner and are not guests of the property owner nor
46 otherwise authorized to make use of the property;

47 ~~(f)~~ (f) The property owner has directed the unlawful occupant or unlawful
48 occupants to leave the property and the unlawful occupant or unlawful occupants have failed
49 or refused to vacate the [~~premises~~] **property**;

50 ~~(g)~~ (g) The property has not been leased to any person for three consecutive months,
51 and the unlawful occupant or unlawful occupants are not current or former tenants of the
52 property pursuant to any agreement with the property owner;

53 ~~(h)~~ (h) The unlawful occupant or unlawful occupants are not immediate family
54 members of the property owner; and

55 ~~[(i)]~~ **(h)** There is no pending litigation related to the real property between the
56 property owner and any known unlawful occupant or unlawful occupants.

57 (2) An ex parte order **entered by the court** to have the unlawful occupant or unlawful
58 occupants removed from **private noncommercial** property ~~[containing a residential dwelling~~
59 ~~entered by the court]~~ shall take effect when entered and shall remain in effect until there is
60 valid service of process and a hearing is held on the motion. Such hearing shall be held
61 within forty-eight hours of filing the verified petition unless good cause is shown for a delay.
62 The court shall deny the ex parte order and dismiss the petition if the petitioner is not
63 authorized to seek relief or does not show good cause.

64 (3) Failure to serve an ex parte order on the respondent shall not affect the validity or
65 enforceability of such order.

66 6. Any ex parte order granted under this section shall be to protect the petitioner from
67 trespass by an unlawful occupant or unlawful occupants and may include such terms as the
68 court reasonably deems necessary to ensure the petitioner's safety including, but not limited
69 to:

70 (1) Restraining the respondent from committing or threatening to commit any act of
71 violence, molestation, stalking, assault, or disturbing the peace of the petitioner or the
72 petitioner's property, including violence against a pet;

73 (2) Restraining the respondent from entering the petitioner's ~~[premises]~~ **property** or
74 dwelling unit or coming within a certain proximity of the petitioner's ~~[premises]~~ **property** or
75 dwelling unit; and

76 (3) Restraining the respondent from communicating with the petitioner in any manner
77 or through any medium.

78 7. When the court has, after a hearing on the petition, issued an order for relief to
79 permanently exclude an unlawful occupant or unlawful occupants from the petitioner's
80 property, it may additionally:

81 (1) Permanently restrain the respondent from committing or threatening to commit
82 any act of violence, molestation, stalking, assault, or disturbing the peace of the petitioner or
83 the petitioner's property, including violence against a pet;

84 (2) Permanently restrain the respondent from entering the petitioner's ~~[premises]~~
85 **property** or dwelling unit or coming within a certain proximity of the petitioner's ~~[premises]~~
86 **property** or dwelling unit;

87 (3) Permanently restrain the respondent from communicating with the petitioner in
88 any manner or through any medium;

89 (4) Permanently expel the respondent from occupying the petitioner's ~~[premises]~~
90 **property** or dwelling unit;

91 (5) Permanently expel the respondent's personal property from the petitioner's
92 ~~[premises]~~ **property** or dwelling unit;

93 (6) Order the respondent to pay all costs of repair to the petitioner's ~~[premises]~~
94 **property** or dwelling unit relating to damages caused by the respondent;

95 (7) Order the respondent to pay all costs associated with service of any ex parte order
96 authorized against the respondent; or

97 (8) Order the respondent to pay court costs.

98 8. A verified petition seeking an ex parte order under this section shall contain
99 allegations relating to those orders and shall pray for the orders desired.

100 9. Once the court grants an order under this section, the sheriff of the county or city
101 not within a county in which the property is located shall enforce such order by removing the
102 respondent from the property.

103 10. If appropriate, the sheriff may arrest any person found ~~[in the dwelling]~~ **on the**
104 **property** for trespass, outstanding warrants, or any other legal cause.

105 11. The sheriff is entitled to the same fee for the service of the ex parte order granted
106 under this section as if the sheriff were serving a writ of possession under section 57.280.
107 After the sheriff serves the order, the property owner or authorized agent may request that the
108 sheriff stand by to keep the peace while the property owner or agent of the property owner
109 changes the locks **if the property contains a residential dwelling** and removes the
110 ~~[personal]~~ property, **including personal property**, of the unlawful occupants from the
111 premises to or near the property line. When such a request is made, the sheriff may charge a
112 reasonable hourly rate, and the person requesting the sheriff to stand by and keep the peace is
113 responsible for paying the reasonable hourly rate set by the sheriff. The sheriff shall not be
114 liable to the unlawful occupant or occupants or to any other party for the loss, destruction, or
115 damage of property. The property owner or his or her authorized agent shall not be liable to
116 an unlawful occupant or any other party for the loss, destruction, or damage to the ~~[personal]~~
117 property, **including personal property**, unless the removal was wrongful.

118 12. A person may bring a civil cause of action if the person was removed from the
119 property under this section without just cause. Such person may seek restored possession to
120 the real property, actual damages to ~~[personal]~~ property, **including personal property** when
121 ~~[personal]~~ **such** property was removed, statutory damages in the amount of one thousand
122 dollars, and reimbursement of court costs. Any damages authorized under this subsection
123 shall be offset by any damages to the real property inflicted by the person who was removed
124 from the real property without just cause. Such damages to real property shall be proven by
125 the property owner. Awards of actual damages shall not exceed the value of the damaged
126 ~~[personal]~~ property.

127 13. The provisions of this section do not limit the rights of a property owner or limit
128 the authority of a law enforcement officer to arrest an unlawful occupant for trespassing,
129 vandalism, theft, or other crimes.

130 14. All proceedings under this section are in addition to any other available civil or
131 criminal remedies, unless otherwise specifically provided in this section.

132 15. (1) The court shall retain jurisdiction over the ex parte order or full order of
133 protection issued under this section for its entire duration. The court may schedule
134 compliance review hearings to monitor the respondent's compliance with the order.

135 (2) The terms of the ex parte order or full order of protection issued under this section
136 are enforceable by all remedies available at law for the enforcement of a judgment, and the
137 court may punish a respondent who willfully violates the ex parte order to the same extent as
138 provided by law for contempt of the court in any other suit or proceeding cognizable by the
139 court.

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